lants for rates in accordance with Tariff E of the First Schedule to the Rules, no more, no less, for electricity actually supplied. Equally, the appellants have a corresponding duty to perform — to pay at scheduled rates, no more and no less, for electricity energy actually consumed. That is a statutory obligation for which the Board is responsible to the Minister who is in turn responsible to Parliament. To waive the payment at scheduled rates is "prohibited not by the express or implied prohibition of the legislature but by the doctrine of ultra vires." In other words, if the plea of estoppel is allowed, the scheduled rates due in respect of the actual amount of electric energy supplied which are not irrecoverable, for it has been sued, would be indirectly remitted which the Board could not by any act directly remit. That would be nullifying the statutory provisions of the Act.

It seems to me that our case amounts to no more than a reassertion and reapplication of the doctrine of estoppel as laid down in the *Maritime Electric Company* case and that the present situation is exactly within the language of Lord Maugham which is in conformity with a long line of previous decisions to be found in 15 *Halsbury's* Laws of England (3rd Edn.).

I would accordingly dismiss the appeal with costs.

Gill C.J. (Malaya) and **Ali F.J.** concurred.

Appeal dismissed.

Solicitors: *Lim Kean Chye & Co.; Allen & Gledhill.*

HALIMAH BINTI ABDUL RAHMAN v. FATIMAH BINTI ABDULLAH

[F.C. (Suffian L.P., Ali and Wan Suleiman F.JJ.) March 20, 1976]

[Alor Setar — Federal Court Civil Appeal No. 88 of 1975]

Land Law — Agreement for sale of land — Vendor in possession of surat akuan — Application made for title — Conditional sale — Whether enforceable when vendor given title — Contracts Act, 1950, ss. 10(1), 24 and 33(a) — Kedah Land Enactment ss. 2, 15.

Contract — Contingent contract — Conditional sale — Contracts Act, 1950, ss. 10(1), 24 and 33(a).

In this case the respondent who had been given a *surat akuan* applied for a *surat putus kechil*. She was granted this but the *surat putus kechil* was subsequently cancelled for non-payment of quit rent and the land reverted to the State. The respondent subsequently reapplied for the land. Soon after that, she agreed to sell the land to the appellant, making it clear in the agreement that she was not its owner but had applied to the State for the land and promising to complete the deal after she obtained title from the State. The appellant paid $300 towards the purchase price and went into occupation of the land. After the respondent obtained the necessary document of title, the appellant asked her to complete the sale but she refused to do so. The appellant thereupon applied for specific performance. This was refused in the High Court on the ground that as the land had reverted to the State the agreement offended against section 195 of the Kedah Land Enactment relating to unlawful occupation of State land. The appellant appealed.

Held, allowing the appeal: the appellant's claim should have been allowed as this was not an outright sale but a conditional sale to be completed when the vendor's application was approved by the State. The contract in this case was clearly enforceable in law.

Case referred to:-

(1) *Brickles* v. *Snell* [1916] 2 A.C. 599.

The following authorities were also cited in argument: *Malaya Borneo Building Society Ltd.* v. *Ramachandran* [1967] M.L.J. 182, 188; *Hassan* v. *Ismail* [1970] 1 M.L.J. 210, 211; *Chin Tai* v. *Siow Shiow & Ors.* [1971] 1 M.L.J. 67, 68.

FEDERAL COURT.

Oo Gin Sun for the appellant.

Ajmir Singh Sandhu for the respondent.

Ali F.J.: This is an appeal against the dismissal of an action for specific performance of an agreement which is in the following terms:

"I, Fatimah binti Abdullah (i/c K.442506 (AS)) residing at 1¼ milestone Jalan Sungei Korok, Alor Star, made this document for the custody of Halimah binti Abdul Rahman (i/c K.015860 (KS)) residing at Langgar 2, Mukim of Langgar, Kota Star as evidence in the future.

There is a piece of Government land which I applied at the Land Office Kota Star according to LOKS (KS) 392/76 in Mukim of Kubang Rotan in area 8 relong (eight) for cultivation of padi, I, Fatimah admit to sell 'usaha saya' on the said land to Halimah binti Abdul Rahman for the sum of $300 (Dollars three hundred only). The said sum mentioned I, Fatimah admit receiving from Halimah and I have handed possession of the said land to Halimah for her to enter and cultivate. My agreement Fatimah with Halimah is that when the Government issue the documents of title on the said land then at that time, I, Fatimah undertake to transfer to the name of Halimah binti Abdul Rahman and all expenses payable at the time I, Fatimah undertake to pay."

"Both of us abovementioned have hereunto affix our respective signatures hereunder in the presence of witnesses, dated March 2, 1957 (August 1, 1376).

Thumbprint of Fatimah bt. Abdullah (Vendor)	Sd. Md. Isa b. Ibrahim Witness (i/c K.407850)
Thumbprint of Halimah bt. Abdul Rahman (Purchaser)	Witness Sd. Jaafar bin Ilias (i/c K.178444)"

Sometime in October 1967, i.e. about 10 years after the agreement the vendor's application was approved and she was issued with the necessary document of title. By a notice dated June, 1968 the purchaser, Halimah, asked the vendor, Fatimah, to complete the agreement which was refused. Hence the appellant's action for specific performance.

It was common ground that the purchaser had paid $300 towards purchase price and that at all material times she has been in occupation of the land.

The vendor, Fatimah, in answer to the purchaser's statement of claim pleaded various grounds in support of her contention that the agreement is void. In paragraph 2 of her defence statement she pleaded uncertainty which, however, was not argued or considered at the trial. In paragraph 3 she pleaded that since at the time of the agreement the land was State land she had no *locus standi* in respect of the land. In other words, the agreement is void because she had no title. This was argued at the hearing but was not considered by the learned trial judge. In any case I can see no merit in the argument in view of what is stated by *S.K. Das* in his book on the Torrens System in Malaya. On page 358 the learned author wrote:

"... If a vendor having neither a title nor the power to obtain a title contracts to sell land and subsequently before the date fixed for completion he acquires power to call for title the purchaser can force him to complete. The fact that at the date of the contract the vendor had neither title nor power to call for title is of itself no answer to a suit for specific performance by either party: *Brickles* v. *Snell*."[1]

In my view section 33(a) of the Contracts Act, 1950 also answers the question. It provides:

"Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened."

A clear implication of the provision is that a contract such as in the instant case is enforceable in law.

In dismissing the claim the learned trial judge said in his judgment that the agreement is void because of section 24 of the Contracts Act which provides, *inter alia*, as follows:

"The consideration or object of an agreement is lawful, unless —

(a) it is forbidden by law;

(b) it is of such a nature that, if permitted, it would defeat any law;

(c) x x x

(d) x x x

(e) x x x"

"'... It might well be that she' (the respondent) 'was only transferring her 'usaha' but at the same time she handed possession of the land to the plaintiff who has been occupying it until today. As the land had reverted to the State, the agreement clearly offends section 195 of the Enactment' (Kedah Land Enactment) 'for unlawful occupation of State land'."

The question is whether the consideration or object of the agreement was possession or occupation of the land or something else. The answer lies in that portion of the agreement which reads thus:

"... My agreement Fatimah with Halimah is that when the Government issue the documents of title on the said land then at that time, I, Fatimah undertake to transfer to the name of Halimah binti Abdul Rahman and all expenses payable at the time I, Fatimah undertake to pay."

My reading of this portion of the agreement is that the promise by the respondent, Fatimah, was to execute a transfer as and when she is issued with the document of title. On that promise the appellant, Halimah, paid the sum of $300 which the respondent admitted to have received. In terms of paragraph (d) of section 2 of the Contracts Act, 1950 the $300 was the consideration for the respondent's promise to execute a transfer. Also in terms of paragraph (e) of the same section the respondent's promise was the consideration for the $300. Having put it in this way, can there be any doubt that possession of the land was not the consideration of the agreement? Nor was it the object of the agreement for the object was to give the appellant something better than possession, i.e. title. Lawyers advising their clients of the legal right under contracts should be familiar with section 10(1) of the Contracts Act, 1950 which is in the following terms:

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void."

Once it is clear that the consideration or object of the agreement is not possession or occupation of the land the whole case for the respondent falls to the ground.

For the reasons stated this appeal was allowed.

Suffian L.P.: With respect I agree with my brother Ali and wish to add only a few words.

I think that the purchaser's claim should have been allowed, because the sale here was not an outright sale, but a conditional sale, to be completed when the vendor's application has been approved by the State. Just as it is legal for some one to sell rubber which he does not have but which he plans to buy and own on a future date, when it is to be delivered, so it is in my opinion equally legal for some one to sell State land on condition that the deal will be completed if and only if the vendor's application for the land has been successful and the State has issued a title to him.

Regarding the arrangement whereby the vendor put the purchaser into possession of this State land, this in my opinion is only a matter between the purchaser and the Government, and does not affect the validity of the conditional arrangement between the vendor and the purchaser.

Also I was much influenced by the fact here that prior to the sale the vendor had a *surat akuan* in respect of the land. A *surat akuan* in Kedah is a document of title authorising the occupation of State land in expectation of the registration of title, see section 2 of the Kedah Land Enactment, and by section 15 of the Enactment a person occupying State land with approval in expectation of registration of title is deemed to have acquired a right to registration of title to the State land occupied, and his approved application cannot be cancelled at any time before the document of title has been registered; and sure enough subsequently the vendor was issued a *surat putus kecil* (a document of title relating to State country land of an area not exceeding fifty *relongs* granted by the State authority, section 2).

It is true that prior to the sale this *surat putus kecil* was subsequently (on December 9, 1956) cancelled for failure to pay quit rent and that the land therefore reverted to the State; but 17 days later (on December 26, 1956) the vendor re-applied for the land. She purported to sell the land less than three months later (on March 2, 1957), making it quite clear to the purchaser in the sale agreement that she was not its owner and that she had only applied to the State for the land, and promising to complete the deal after she had obtained title from the State.

In view of these circumstances I do not think that the agreement was void.

Wan Suleiman F.J. concurred.

Appeal allowed.

Solicitors: *Oo Gin Sun, Bakar & Co.; Ajmer Singh, Sandhu & Zakaria.*